Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations

Chamber Ref: FTS/HPC/PR/25/0973

Re: Property at 108 Tannahill Drive, East Kilbride, G74 3HT ("the Property")

Parties:

Miss Hannah Dressel, 39 Ravenscraig Road, Stewarton, KA3 3AQ ("the Applicant")

Miss Michelle McHugh, 43 Levers Road, Matua Tauranga, New Zealand, 3110, New Zealand ("the Respondent")

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined to grant an order against the Respondent for payment to the Applicant of the sum of £100 in terms of Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

A: BACKGROUND:

1. This is an application under Rule 103 of the Procedural Rules and Regulations 9 and 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations). The application was made by the Applicants on 5.3.2025

2. The following documents were lodged in support of the application:

a) Tenancy agreements for Private Residential Tenancies (PRT) between the parties starting 15.8.2021.

b) Deposit scheme reply Safe Deposits Scotland dated 6.10.2021 confirming that the deposit was protected as of 5.10.2021.

c) Email correspondence between the Applicant and the letting agents McGoogan dated 16.1.2025 to 20.1.2025 to confirm the tenancy end date of 13.2.2025.

3. The application was accepted on 20.3.2025 A Case Management Discussion (CMD) was scheduled for 14.8.2025 by teleconference and intimated to both parties. The Tribunal was satisfied that the Respondents had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
4. The Respondent sent further representations, including an email from the letting agent to her dated 23.8.2021 stating "Good morning hope you are well Deposit has been lodged. Will send DAN number through".

B: THE CMD

1. The Applicant and the Respondent took part in the teleconference CMD.

2. The legal member explained the purpose and process of the CMD.

3. Both parties agreed that no hearing would be necessary. Both parties agreed the facts of the case.

4. Both parties agreed the start and end date of the tenancy, the deposit sum, the date the deposit was lodged with Safe Deposit Scotland and that the deposit had been paid to the letting agent and not the landlord. The Applicant confirmed the deposit had been returned in full.

5. The representations from the Applicant were that the delay was not minor as it was the equivalent of 20% of the statutory period to lodge the deposit. She stated the landlord should have known that she had paid the deposit prior to 15.8.2021 and should have chased up the letting agent prior to the lodging period expiring. She stated the reason she waited 3 ½ years before making the application was that she followed legal advice not to this before she left the tenancy. She stated that the letting agency had more than one office and whilst she appreciates the staff member dealing with the deposit might have been ill with Covid, this should not have delayed the lodging process. Other staff should have picked this up. They should not have waited to the very last day. At the time she had not chased up the DAN number as she herself had been unaware of the time limit for lodging a deposit. She considered that in the circumstances she should be entitled to payment of the equivalent of the deposit sum of £425.

6. The Respondent, who lives in New Zealand, advised that she had been unaware that there had been a delay in lodging the deposit until she was contacted about the application. She had left the letting agent to deal with the matter and the deposit had been paid to the letting agent. The agreement between her and the letting agent was that the deposit would be paid to the letting agent and they would lodge it. The tenancy started on 15.8.2021 and 8 days later, on 23.8.2021, she had received an email from the letting agent confirming that the deposit had been lodged and she would in due course be advised of the DAN number. She had relied on that email in good faith. She stated in hindsight maybe she should have asked for copies of the lodging documentation at the time. The agency had given her that for her new tenants and she had in turn given it to the new tenants. When she had challenged the letting agent she was told that the staff member dealing with the deposit had become ill with Covid and thus got behind, which led to the delay. The letting

agent had also told her they would be looking at their process due to this case. She advised that she had been upset by the incident and apologised to the Applicant. She stated she had believed the email and thinks this was out of her control. She stated this would not happen again. In her representations she had made the following representations: • The delay was minor and unintentional • The tenant was informed early in the tenancy that the deposit had been registered • The deposit was ultimately protected in full • The tenant received the entire deposit back upon leaving the property, which was vacated in excellent condition • There was no financial detriment to the tenant • I have no prior history of non-compliance and have otherwise met all responsibilities as a landlord

C: THE LEGAL TEST

1. In terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations) an application under that Regulation must be made within 3 months of the end of the tenancy.

2. In terms of Regulation 10 "if satisfied that the landlord did not comply with any duty in Regulation 3 the First tier Tribunal
   (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and
   (b) may, as the First tier Tribunal considers appropriate in the circumstances of the application order the landlord to (i) pay the tenancy deposit to an approved scheme; or (ii) provide the tenant with the information required under regulation 42."

3. In terms of Regulation 3 "(1) A landlord who had received a tenancy deposit in connection with a relevant tenancy must, within 30 days of the beginning of the tenancy (a) pay the deposit to the scheme administrator of an approved scheme; (b)provide the tenant with the information required under regulation 42.

4. Relevant procedural legislation:

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a)in any place where a hearing may be held;

(b)by videoconference; or

(c)by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a)identifying the issues to be resolved;

(b)identifying what facts are agreed between the parties;

(c)raising with parties any issues it requires to be addressed;

(d)discussing what witnesses, documents and other evidence will be required;

(e)discussing whether or not a hearing is required; and

(f)discussing an application to recall a decision.
(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Rule 18 of the Rules of Procedure:
18.—(1) Subject to paragraph (2), the First-tier Tribunal—
(a)may make a decision without a hearing if the First-tier Tribunal considers that—
(i)having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
(ii)to do so will not be contrary to the interests of the parties; and
(b)must make a decision without a hearing where the decision relates to—
(i)correcting; or
(ii)reviewing on a point of law,
a decision made by the First-tier Tribunal.
(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

D: FINDINGS IN FACT
Based on the documents and the discussion at the CMD the Tribunal makes the following findings in facts:

1. The deposit of £425 was paid by the Applicant to the Respondent's letting agent prior to the tenancy starting on 15.8.2021.
2. The parties entered into a Private Residential Tenancy over the property which commenced 15.8.2021 and ended on 13.2.2025, following notice from the Applicant because she wished to move into a larger property.
3. In terms of Clause 1 of the agreement a deposit of £425 was agreed and was to be protected by the scheme administrator Safe Deposits Scotland Ltd.
4. The letting agent lodged the deposit with the scheme administrator on 5.10.2021.
5. The Applicant was advised of this on 6.10.2021 by the scheme administrator.
6. The Respondent and letting agent had agreed that the letting agent would take and lodge the deposit on her behalf.
7. The letting agent wrote to the Respondent on 23.8.2021 confirming that the deposit had been lodged.
8. This was not the case.
9. The Respondent was not aware of any delay in the deposit being lodged until these proceedings were raised.
10. There was a delay of 6 days outwith the 30 working day period allowed during which the deposit was not protected.
11. The deposit was protected for the rest of the tenancy, which lasted for just under 3 ½ years.
12. The dispute resolution service of a deposit scheme was available to the Applicant at the end of the tenancy.
13. The entire deposit was returned to the Applicant after the tenancy ended and without delay.
14. The Respondent had not insisted on receiving the documents confirming the deposit had been lodged within the 30 working day period from the letting agent.

15. The delay in lodging the deposit was caused by the staff member in the letting agency becoming ill with Covid, which led to a backlog in processing the deposit.

E: REASONS FOR DECISION:

1. The Tribunal did not consider that there was any need for a hearing as both parties agreed the material facts of the case.

2. The Tribunal makes the decision on the basis of the documents lodged by both parties and the information provided by the parties at the CMD.

3. Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 is a regulatory sanction to punish the landlord for non-compliance with the regulations. The non-compliance with the Regulations is not disputed by the landlord.

4. In terms of Regulation 10 (a) if satisfied that the landlord did not comply with any duty in regulation 3 the Tribunal must make a payment order between £1 and three times the deposit. The maximum amount in this case with a deposit amount of £425 would thus be £1,275.

5. Ultimately the Regulations were put in place to ensure compliance with the Scheme and the benefits of dispute resolution in cases of disputed deposit cases, which the Schemes provide. This was explicitly explained in the Upper Tribunal decision Ahmed v Russell UTS/AP/22/0021 at [19] by Sheriff Cruickshank as follows: [19] The main purpose of the legislation was to move the holding of deposits from landlords to independent approved third parties. Further, policy objectives behind the Regulations were three fold. First, to reduce the number of unfairly withheld tenancy deposits. Secondly, to ensure that deposits were safeguarded throughout the duration of the tenancy. Thirdly, to ensure that deposits were returned quickly and fairly, particularly where there was a dispute over the return of the deposit, or portion of it, to tenant or landlord. In order for sanctions to be effective and to actively encourage landlords to comply with the legislation, it was intended that they should apply even if the failure to comply was rectified by the time an application for a sanction had been made (see the executive note accompanying the 2011 Regulations).

6. The Tribunal considers that the discretion of the Tribunal requires to be exercised in the manner set out in the case Jenson v Fappiano (Sheriff Court (Lothian and Borders) (Edinburgh) 28 January 2015 by ensuring that it is fair and just, proportionate and informed by taking into account the particular circumstances of the case. The Tribunal has a discretion in the matter and must consider the facts of each case appropriately. In that case the Sheriff set out some of the relevant considerations and stated that the case was not one of "repeated and flagrant non participation in , on non-compliance with the regulations, by a large professional commercial letting undertaking, which would warrant severe sanction at the top end of the scale"..It was held that "Judicial discretion is not exercised at random, in an arbitrary, automatic or capricious manner. It is a rational act and the reasons supporting it must be sound and articulated in the particular judgement. The result produced must not

be disproportionate in the sense that trivial noncompliance cannot result in maximum sanction. There must be a judicial assay of the nature of the noncompliance in the circumstances..."

7. The approach the Tribunal has to take in making a decision was further clarified in the decision UTS/AP/0006 by Sheriff Jamieson, which set out that the Tribunal first has to identify the relevant matters to be taken into account and then in a second step apply weight to these individual relevant factors. The decision set out the correct approach in para 23 to 28 as follows: "[23] The FTS or UTS would be bound to take into account as an aggravating factor any deliberate intention on the part of a landlord to ignore the tenancy deposit scheme, when that landlord had knowledge of the scheme, but had deliberately chosen to flout the Regulations. I do not find that to be the situation in this case. [24] The relevant factors identified by the FTS in this case are the fact the deposit was exposed to risk for the duration of the tenancy and, as a mitigating factor, that the deposit was repaid immediately after the end of the tenancy. [25] A landlord's past failures with previous tenants' deposits may be a relevant factor in assessing the appropriate amount of sanction, but as the payment thereof goes to the tenant directly affected by the breach of the Regulations, care has to be taken about the weight to be given to that factor in any given case. [26] Having identified the relevant factors for consideration, the FTS or UTS on appeal ought then secondly to determine the weight to be attached to each factor. [27] The FTS did not do that in this case. While it is true the deposit was at risk throughout the duration of the tenancy, the FTS did not assess how real that risk was. Although the appellant was non-compliant with the Regulations at the time, his evidence before the UTS showed he regularly repaid his tenants' deposits. Accordingly, the actual risk in this case was relatively insignificant, but as one purpose of the Regulations is to guard against any level of risk, moderate weight ought to be attached to this factor in the circumstances of this case. [28] In my opinion, significant weight ought to be attached to the appellant's ignorance of the scheme over the prolonged period of five years as a landlord. On the other hand, significant weight falls to be attached to the mitigating factors that the respondents' deposit was repaid in full immediately after the termination of the tenancy and that the respondents suffered no loss or inconvenience as a consequence of the appellant's failure to comply with the Regulations."

8. In the decision Rollet v Mackie UTS/AP/19/0020 Sheriff Ross set out at [13] "In assessing the level of a penalty charge, the question is one of culpability and the level of penalty requires to reflect the level of culpability. "

9. In the case before the Tribunal today there is a clear breach of the Regulations. The deposit was not lodged within 30 working days as required by Regulation 3. Thus the Tribunal has to make an order for a financial penalty to be paid by the Respondent to the Applicant. The purpose of this is not to compensate the tenant but to mark the gravity of the breach by issuing a penalty to the landlord.

10. Matters identified by the Tribunal as relevant factors for the breach of the Regulations were the duration of the period of the deposit not being protected and that the landlord had not made further enquiries whether the lodging process was completed within the 30 working days. Matters identified as relevant mitigating factors were that the tenancy deposit was paid to the scheme administrator after a delay of 6 days, that the deposit was protected for most of the tenancy duration, that it was protected at the end of the tenancy

and thus the Applicant would have had access to the dispute resolution mechanism of the scheme administrator should this have been necessary, that the deposit was returned promptly and in full without having to use said mechanism at the end of the tenancy, that the landlord had in good faith relied on her letting agent's email that the deposit had been protected within 8 days of the tenancy starting, and that there had been a very short period of risks and no actual loss to the tenant in all the circumstances. The risk was limited as it arose at the very start of a tenancy that lasted 3 ½ years and the funds were never in the hands of the landlord and thus never mixed with their own funds. The Respondent clearly had not deliberately disregarded the obligations as a landlord, she accepted the delay had taken place, investigated why it had taken place and has since taken steps to avoid any similar problems. The Respondent has fully engaged with the Tribunal process and had admitted the breach of the Regulations even prior to the CMD.

11. Weighing these matters, the Tribunal considers that the failure to comply with the Regulations did not arise from a deliberate flouting of the landlord's obligations and a deliberate deprivation of the tenant of the benefits of the deposit protection mechanism. It is accepted by both parties that there was a clear failure on the part of the letting agent to ensure that during a time of illness of a staff member the office process would notice and prevent a delay in processing deposits. It was not clear why the letting agent would have sent the email on 23.8.2021 advising the landlord that the deposit had in fact been lodged when at that time the deposit clearly had not been lodged. However, ultimately the landlord cannot abdicate responsibility even if they engage a letting agent and it is the landlord who is responsible to ensure their duties are observed. In these proceedings the Tribunal cannot comment on any redress the Respondent may have against the letting agent in terms of their contractual arrangements and the letting agent code. The landlord had not requested further information towards the end of the 30 working day period and now states she will do so in future. With regard to culpability, the Tribunal considers that the landlord trusting an email from the letting agent and not pursuing the matter further within the 30 working day period is at the very low end of culpability of a landlord and this is one of the most important factors in this case. The Tribunal attaches significant weight to the issue of culpability.

12. The duration of the period when the deposit was unprotected was 6 additional days, however, for the major part of the tenancy, which lasted 3 ½ years, the deposit was protected. The deposit was held with the scheme administrator at the end of the tenancy, when this is most important to allow the tenant access to the dispute resolution scheme and the deposit was repaid in full. Ultimately the purpose of the Regulations was achieved, namely that the deposit was protected and returned timeously. The Tribunal attaches significant weight to these mitigating factors.

13. In all the circumstances the tribunal considered it fair, proportionate and just to make a payment order for the sum of £ 100. This is lower than requested by the Applicant and is at the low end of the scale, but it is still a substantial penalty for the landlord. I consider this reflects the seriousness of the breach and

constitutes a meaningful sanction for an unintentional non-compliance of the Regulations by the landlord.

F: DECISION:

The First-tier Tribunal for Scotland (Housing and Property Chamber) grants an order against the Respondents for payment to the Applicant of the sum of £100 in terms of Regulation 10 (a) of The Tenancy Deposit Schemes (Scotland) Regulations 2011

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Petra Hennig McFatridge
Legal Member/Chair **Date 14 August 2025**